



Agenda Dates: 04/11/01,  
04/25/01  
Agenda Items: 2D, 2D

**STATE OF NEW JERSEY**  
**Board of Public Utilities**  
*Two Gateway Center*  
*Newark, NJ 07102*

**ENERGY**

IN THE MATTER OF THE MOTION OF )  
PUBLIC SERVICE ELECTRIC AND GAS )  
COMPANY TO INCREASE ITS )  
REMEDATION ADJUSTMENT CLAUSE )

DECISION AND ORDER  
MODIFYING INITIAL DECISION

DOCKET NO. GR99090672

(SERVICE LIST ATTACHED)

BY THE BOARD:

This Decision and Order ("Order") memorializes action taken by the Board of Public utilities (Board") in this matter by a vote of two Commissioners at its April 11, 2001 public agenda meeting and as clarified by the Board at its April 25, 2001 public agenda meeting.

On September 24, 1999, Public Service Electric and Gas Company ("Petitioner") petitioned the Board for an Order approving Petitioner's Manufactured Gas Plant Remediation Program Costs ("MGP costs") incurred during the period August 1, 1998 through July 31, 1999 ("RAC 7") for recovery through its previously Board-approved Manufactured Gas Plant Remediation Adjustment Clause ("RAC").

On September 29, 1999, the Board transmitted Petitioner's filing to the Office of Administrative Law ("OAL") for hearing as a contested case. The matter was assigned to Administrative Law Judge ("ALJ") William Gural. The ALJ conducted a public hearing on December 28, 1999 in New Brunswick, New Jersey.

The parties in this proceeding are Petitioner, the Division of the Ratepayer Advocate ("Advocate") and Board Staff ("Staff"). Petitioner replied to discovery that has been propounded by the Advocate and Staff and the parties engaged in discovery and settlement discussions during this proceeding.

An evidentiary hearing was scheduled in this matter on November 13, 2000. At the outset of the hearing, the parties indicated that a settlement was being discussed, upon which the ALJ adjourned the hearing until November 20, 2000. At a status conference on November 20, 2000, the parties represented to the ALJ that, while there were no outstanding issues, the parties were unable to sign a stipulation of settlement. Petitioner and the Advocate requested that Petitioner's petition and the unsigned stipulation of settlement be entered into the record, and that the ALJ issue an Initial Decision based on the terms contained in the stipulation. Staff did not object to the proposal. An attachment to the petition contained the prefiled testimony of witness Bruce A. Preston, Petitioner's Project Manager – Site Remediation, showing that the remediation costs through July 31, 1999, are approximately \$5,830,000 for the gas customers

and \$3,887,000 for the electric customers. (Attachment A-4 to Preston testimony.) Neither the Advocate nor Staff disputed these figures.

On November 28, 2000, ALJ Gural filed his Initial Decision with the Board, finding:

1. The total annual amortization for the RAC 1 to RAC 7 periods is \$8,579,000 plus the carrying costs of \$1,138,000 for a total of \$9,717,000. Of this amount, \$5,830,000 (60%) will be allocated to gas customers and \$3,887,000 (40%) will be allocated to electric customers. (Attachment A-4 to Preston testimony.)
2. The program costs incurred during the RAC 7 period of August 1, 1998 to July 31, 1999 in the sum of \$9,717,000 are reasonable with recovery commencing when approved by the Board.
3. Attachment C to witness Preston's testimony contains the tariff revisions (pages 2 to 15 of Attachment C). The RAC factors for other than contract customers increase from \$0.1539 per therm including Sales and Use Tax ("SUT") to \$0.1702 per therm (including SUT) and for contract customers from \$0.0169 per therm (including SUT) to \$0.0187 per therm (including SUT).

On December 11, 2000, the Advocate filed exceptions to the Initial Decision with the Board Secretary, requesting modification of the Initial Decision. On December 12, 2000, Petitioner filed exceptions to the Initial Decision with the Board Secretary, requesting modification of the Initial Decision. Both letters stated that the following five terms, on which Petitioner and the Advocate agreed and submitted to the ALJ, were omitted from the Initial Decision and should be incorporated in the Final Order of the Board in this matter:

1. Petitioner agrees to maintain separate accounting records for the gas and electric deferred remediation costs and the accrual of carrying costs on those balances.
2. Staff and the Advocate shall develop and jointly serve initial generic discovery questions upon Petitioner immediately upon receipt of the Company's filing each year. The questions have been developed, and agreed upon by the Advocate and Petitioner (Attachment A to the unsigned stipulation of settlement). Petitioner agrees to gather the answers to these generic questions while assembling its filing for the next RAC, and further agrees to provide answers to the generic requests within the time frame mandated in N.J.A.C. 1:1-10.4.
3. In all future MGP cost recovery petitions, Petitioner will, as part of its initial filing, provide sufficient supporting data to show reconciliation of the prior RAC period's costs and recoveries and the derivation of the cost recovery factor, including the derivation of deferred taxes and carrying costs.
4. In all future MGP cost recovery proceedings commencing with RAC 8, Petitioner will provide copies of all requested remediation-related documentation, provided that the scope of such discovery is on a sample basis. Petitioner will not be responsible for determining the sample. Petitioner will furnish copies of the requested sample documentation to the Advocate and its consultant, the assigned Deputy Attorney General and Staff.

5. In future MGP discovery and settlement meetings, minutes of the issues discussed and any resolutions reached will be prepared by Petitioner and circulated to the Advocate and Staff. The Advocate and Staff will advise Petitioner of any material modifications to the minutes that they would like made, and those modifications will then be recirculated until all parties concur that the minutes substantially capture the issues, action items, and resolutions reached in the meeting.

On December 22, 2000, Petitioner filed a further exception to the Initial Decision with the Board Secretary requesting an additional modification to the Initial Decision. Specifically, Petitioner stated that the tariff revisions for the RAC factors should have been expressed in cents as contained in the attachments to Petitioner's testimony, rather than in dollars as set forth in the Initial Decision.

The Initial Decision originally had an effective date of January 12, 2001. On January 5, 2001 and February 14, 2001, the Board requested 45-day extensions of the effective date of the Initial Decision to review the record in this matter, including the requested corrections and modifications. The revised effective date of the Initial Decision has been extended to April 12, 2001.<sup>1</sup>

The Board has reviewed the Initial Decision, the findings of the ALJ, and the record in this proceeding. The Board FINDS the first finding set forth in the ALJ's Initial Decision on the following issue to be reasonable and in the public interest:

The total annual amortization for the RAC 1 to RAC 7 periods is \$8,579,000 plus the carrying costs of \$1,138,000 for a total of \$9,717,000. Of this amount, \$5,830,000 (60%) will be allocated to gas customers and \$3,887,000 (40%) will be allocated to electric customers. (Attachment A-4 to Preston testimony.)

Therefore, the Board ADOPTS the ALJ's finding on this issue. However, as to the actual RAC program costs incurred during the RAC 7 period of August 1, 1998, to July 31, 1999, the Board FINDS that the costs should be \$8,410,000 as shown on Attachment A-4 to Preston's testimony rather than \$9,717,000 as set forth by the ALJ in his second finding. The Board notes that this discrepancy appears to be the result of a transposition of numbers on Attachment A-4. Therefore, the Board MODIFIES the Initial Decision on this issue to correct the discrepancy.

In addition, the Board has reviewed the December 11, 2000 and December 12, 2000 letters of the Advocate and Petitioner requesting modifications. The Board believes that the modifications numbered one through four will provide for improvements to the methods used by Petitioner for maintaining its RAC accounting records and expedite the provision of data to the parties by Petitioner in prospective RAC cases. Therefore, the Board MODIFIES the Initial Decision and incorporates the first four terms requested by the Advocate and Petitioner into this Order as if they were set forth at length herein. The Board declines to direct the parties on how to conduct informal conferences and therefore does not adopt or incorporate item five as a part of this Order. This is without prejudice to the parties reaching their own agreement as to the conduct of informal discovery meetings and/or settlement conferences.

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<sup>1</sup> Final Board action was taken with regard to the Initial Decision at its April 11, 2001 public agenda meeting. At its April 25, 2001 public agenda meeting, the Board, on its own motion, took further action to clarify its prior determination in this matter.

Further, the Board has reviewed the December 22, 2000 letter of Petitioner and agrees that the RAC factors contained in the third finding set forth in the ALJ's Initial Decision are erroneously shown as dollars rather than as cents. Therefore, the Board MODIFIES the Initial Decision and ORDERS that the RAC factor for other than contract customers be increased from 0.1539 cents per therm (including SUT) to 0.1702 cents per therm (including SUT) and the RAC factor for contract customers be increased from 0.0169 cents per therm (including SUT) to 0.0187 cents per therm (including SUT) effective on and after the date of this Order. (Attachment A-4 to Preston testimony). Approval of these rates will provide for the recovery of prudently incurred remediation costs.

Petitioner's RAC costs shall remain subject to ongoing audit by the Board. This Decision and Order shall not preclude nor prohibit the Board from taking any actions determined to be appropriate as result of any audit.

The Board HEREBY DIRECTS Petitioner to submit a revised gas SBC Tariff Sheet No. 31 that conforms to the terms and conditions of this Order within ten (10) business days from the date of this Order.

DATED: April 27, 2001

BOARD OF PUBLIC UTILITIES  
BY:(SIGNED)

CAROL J. MURPHY  
ACTING PRESIDENT

(SIGNED)

FREDERICK F. BUTLER  
COMMISSIONER

ATTEST: (SIGNED)  
FRANCES L. SMITH  
SECRETARY